



No. 03-5314

Plaintiffs do not, for the most part, oppose the modification and enlargement. They ask that they receive forty days in which to file their responsive brief, and the government does not oppose that request if the Court determines that expedition should be granted. Plaintiffs also ask that the government's reply brief be limited to 10,000 words rather than 12,000 words as we proposed. Although the government believes that its request is appropriate in light of the extraordinary nature of this case, we do not, at this point, insist on resolving a dispute that may be avoided if the Court denies the requested expedition or if plaintiffs' responsive brief does not, in fact, require a reply brief of more than 10,000 words. We therefore do not oppose the modification proposed by plaintiffs but note that it may be necessary to seek a modest additional expansion of word limits after reviewing plaintiffs' responsive brief.

Plaintiffs also oppose our suggestion that this appeal should, if possible, be placed on the same schedule as Cobell v. Norton, No. 03-5262. As discussed, the government has not advocated expedition of this appeal. However, if expedition is granted, it would be altogether appropriate to expedite No. 03-5262 as well. The internet injunction at issue in No. 03-5262 and the structural injunction at issue in this appeal arise out of the same proceedings and, in the government's view, are premised on the same mistaken understanding of governing law and the scope of the court's jurisdiction. Indeed, as plaintiffs do not dispute, the internet injunction provisions could have been included among the disparate requirements of the structural injunction.


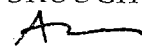
Plaintiffs offer no reason whatsoever why the two appeals should not be placed on the same schedule if practicable. Instead, they urge that the government's scheduling proposal is "nothing more than a backdoor attempt" to circumvent the Court's decision that the two appeals should not be consolidated. Appellees' Response at 2.

Plaintiffs are mistaken. Consolidated appeals are briefed and argued as a single appeal. The government has not renewed its request that the appeals be heard in this manner. Indeed, as the government noted in its previous filings, submissions relating to the internet injunction are pending before the district court, and their disposition may necessitate expedition even if the Court determines that expedition of the structural injunction appeal is inappropriate in light of the recently enacted legislation. At the present time, however, there is every reason to set these two very closely related appeals on a similar schedule if practicable. Thus, we ask that the Court expedite briefing of No. 03-5262 if it expedites this appeal, and that it defer scheduling of No. 03-5262 if it determines that expedition of this appeal is not appropriate.

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FEBRUARY 2004

### CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2004, I am causing copies of the foregoing reply to be sent to the Court by hand delivery and to be served on the following counsel by first class mail and by fax:

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